

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

<p>JON HENRI BRYANT, SR.,</p> <p>Petitioner,</p> <p>vs.</p> <p>SIOUX FALLS POLICE DEPARTMENT; TOM WARD; JOHN CARDA; CHIEF BURNS; SERGEANT TIM HAGEN; ROBERT FORSTER,</p> <p>Respondents.</p>	<p>4:23-CV-04067-KES</p> <p>ORDER GRANTING IN PART PETITIONER’S MOTION TO EXTEND TIME AND DENYING PETITIONER’S MOTION TO APPOINT COUNSEL, AND SUA SPONTE ORDER RULING THAT PETITIONER MAY PROCEED IN FORMA PAUPERIS ON APPEAL</p>
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Petitioner, Jon Henri Bryant, Sr., is an inmate at the Coleman Medium Federal Correctional Institution, in Coleman, Florida. Docket 1 at 1. Bryant filed a pro se lawsuit pursuant to 42 U.S.C. § 1983. *Id.*; Docket 11 at 1. Bryant moved for leave to proceed in forma pauperis, which this court granted. Dockets 2, 9. This court screened Bryant’s complaint for dismissal under 28 U.S.C. § 1915A, and judgment was entered against Bryant. Dockets 11, 12. Bryant filed a motion to extend time to file a notice of appeal and a motion to appoint counsel. Docket 13.

**I. Motion for Extension of Time**

Federal Rule of Appellate Procedure Rule 4(a)(1)(A) provides that “[i]n a civil case, . . . the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.” The district court may grant a motion to extend time to file a notice of

appeal if “a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires[.]” Fed. R. App. P. 4(a)(5)(A).

This court entered judgment dismissing Bryant’s case on August 7, 2023. Docket 12. Thus, the time prescribed for Bryant’s Notice of Appeal was until September 6, 2023. *Id.*; Fed. R. App. P. 4(a)(1)(A). Bryant filed a motion for extension of time on September 11, 2023, which was post-marked from the prison’s internal mail system on September 7, 2023. Docket 13. Because Bryant’s motion for extension of time was filed within thirty days after September 6, 2023, the time prescribed in Rule 4(a), Bryant’s motion is timely. *See* Fed. R. App. P. 4(a)(5)(A). Bryant requests an extension of 60 days. Docket 13 at 1. “No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.” Fed. R. App. P. 4(a)(5)(C). Thus, this court grants in part Bryant’s motion to extend time for filing a notice of appeal, Docket 13, and he must file his notice of appeal on or before **October 6, 2023**.

## **II. Motion to Appoint Counsel**

Bryant also files a motion for this court to appoint counsel because of his disability. Docket 13 at 1. “A pro se litigant has no statutory or constitutional right to have counsel appointed in a civil case.” *Stevens v. Redwing*, 146 F.3d 538, 546 (8th Cir. 1998) (citing *Wiggins v. Sargent*, 753 F.2d 663, 668 (8th Cir. 1985)). In determining whether the appointment of counsel is necessary, the court should consider the factual and legal complexity of the case and the petitioner’s ability to investigate and articulate his claims without court

appointed counsel. *Id.* (citing *Johnson v. Williams*, 788 F.2d 1319, 1322-23 (8th Cir. 1986)). This court trusts that prison officials will be accommodating of Bryant's disability, and therefore, appointment of counsel is not necessary at this time. Thus, Bryant's motion to appoint counsel, Docket 13, is denied.

### **III. In Forma Pauperis**

Bryant has filed a motion to extend time to file notice of appeal, but he did not move for leave to proceed in forma pauperis on appeal. *See* Docket 13. The Clerk of Court transmitted a notice of appeal to the Eighth Circuit. Docket 14. Under Federal Rule of Appellate Procedure 24(a)(3), “[a] party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal in forma pauperis without further authorization” unless the appeal is not taken in good faith, the court “finds that the party is not otherwise entitled to proceed in forma pauperis[,]” or a statute provides otherwise.

It appears that Bryant's appeal is taken in good faith. Because Bryant was granted leave to proceed in forma pauperis in the district-court action, he is granted leave to proceed in forma pauperis on appeal.

IT IS ORDERED:

1. That Bryant's motion for extension of time, Docket 13, is granted in part. Bryant must file his notice of appeal on or before **October 6, 2023**.
2. That Bryant's motion to appoint counsel, Docket 13, is denied.

3. That this court sua sponte grants Bryant leave to proceed in forma pauperis on his appeal.

Dated September 12, 2023.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER

UNITED STATES DISTRICT JUDGE